IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.E.A. No. 75 of 2007

Date of Decision: October 29, 2007

The Commissioner, Central Excise Commissionerate, Ludhiana.

...Appellant

Versus

M/s Best Dyeing, Ludhiana.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Ms. Ranjana Shahi, Advocate,
for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

This appeal filed under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), is directed against order dated 22.9.2006 (A-3), passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal') allowing an application filed alongwith the appeal seeking condonation of 190 days delay in filing the appeal. The appeal was directed against the

order in appeal dated 15.2.2005 (A-2). According to the provisions of Section 37C of the Act, any decision or order passed or any summons or notices issued under the Act or Rules made thereunder are required to be served on the parties. The service can be effected by tendering the decision or sending it by registered post with acknowledgement due. In the event of failure to serve in the aforementioned manner then the service could be effected by affixation of a copy of the decision/order etc. on some conspicuous part of the factory or warehouse or other place of business or usual place of residence. It is further worthwhile to notice that under Section 35B(3) of the Act an appeal could be filed before the Tribunal within three months from the date on which the order sought to be appealed against is communicated to the party. The Tribunal has recorded a finding that the order in appeal was sent to the assessee-respondent through Speed Post on 3.3.2005 and the same was not received back. It is, thus, obvious that the method of serving the assessee-respondent by Speed Post is not the one contemplated by Section 35C of the Act, which require communication of order by registered post with acknowledgement due. The Tribunal has, thus, concluded that there was no evidence to prove that the order was served on the assessee-respondent. It was in these circumstances that the delay of 190 days has been condoned.

After hearing learned counsel, we are of the considered view that no interference of this Court is warranted in the discretion exercised by the Tribunal in allowing the application seeking condonation of delay of 190 days in filing the appeal. In the face of clear provision under Section 35C read with Section 35B(3) of the Act, the

filing of the present appeal has to be viewed as an illustration of frivolous litigation preferred by the Department. Therefore, while dismissing the appeal, we saddle the appellant with costs of Rs. 5,000/-. The costs shall initially be deposited by the revenue-appellant with the Punjab State Legal Services Authority, Chandigarh. However, a fact finding inquiry be held to find out the person who had advised filing of such appeal. The aforesaid inquiry be completed within a period of one month from the date of receipt of copy of this order. The costs of Rs. 5,000/- shall be deducted from the pay of the employee who had advised filing of the instant appeal.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 29, 2007
Pkapoor